

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRAVELHOST, INC.,
a corporation

Plaintiff,

vs

JENNIFER LEA BRADY, ANDREW &
TIFFANY SEELEY, BRIAN S. THOMAS
ROBERT NICKERSON, JR., and DONNA
A. STAMATES.

Defendants.

Civil Action No. 3:11-cv-00454-M

PLAINTIFF'S REPORT REGARDING SETTLEMENT CONFERENCE

**TO THE HONORABLE BARBARA M.G. LYNN,
UNITED STATES DISTRICT JUDGE:**

TRAVELHOST, Inc. ("TRAVELHOST" or "Plaintiff") files this *Report Regarding Settlement Conference*, and states:

This case is set on the Court's trial docket beginning June 11, 2012.¹ The Scheduling Order requires the parties and counsel to meet in person or by telephone conference for a settlement conference by May 21, 2012.

For three months, Defendants' counsel has indicated that he is withdrawing from representation of Defendants, but has not yet filed a Motion to Withdraw. Over the past months, settlement discussions have been stifled because Defendants' counsel does not respond to Plaintiff's communications, but Plaintiff's counsel cannot directly discuss settlement options

¹ See Scheduling Order, doc. 24.

with individual Defendants, as they are represented.² On May 18, 2012, defendant Jennifer Brady sent an email directly to counsel for TRAVELHOST, indicating that Defendants' counsel is going to withdraw from representation in this case and that settlement discussions will need to move forward with each defendant acting *pro se*.

In an attempt to comply with the Court's Scheduling Order, TRAVELHOST scheduled a settlement conference call with all parties and counsel for 11:00 a.m. (CT) on May 21, 2012.³ TRAVELHOST followed-up with counsel for the Defendants inquiring whether he would be participating in the call, but did not receive a response prior to the call. Defendants Jennifer Brady and Brian Thomas, together with his wife Stephanie Thomas, and TRAVELHOST's Founder and Chairman of the Board Jim Buerger participated in the call, along with the undersigned counsel for TRAVELHOST.⁴

Recognizing the precarious ethical situation, counsel for TRAVELHOST informed the defendants on the call that they cannot discuss the case with the Defendants without Defendants' attorney present because they are currently represented by counsel and, until withdrawal is approved by the Court, such prohibition continues to exist. TRAVELHOST informed the parties that it would be seeking a three-month continuance of the trial date and to contact their attorney regarding the impact that may have upon them and to discuss if they are opposed.

² In full candor, some discussions have been held between the husband of Donna Stamates and the Plaintiff's Chairman of the Board, without any counsel present, but an agreement was not reached and the discussion did not involve all defendants.

³ TRAVELHOST is seeking an emergency continuance of trial and all pretrial deadlines, given the current situation. Such motion is being filed today with additional facts. However, TRAVELHOST recognizes the need to meet all Court deadlines until the Court grants a continuance.

⁴ TRAVELHOST waited for 10 minutes before determining that no other parties or counsel would be joining the call. Donna Stamates, Andrew Seeley, and Tiffany Seeley did not call in. Robert Nickerson, Jr. was instructed by TRAVELHOST that he was not required to participate in the call due to his bankruptcy filing and he did not call in.

After the conference call was over, Defendant's counsel responded by email that he is withdrawing from the representation and will not be participating in the settlement conference, unless the Court orders otherwise.

Counsel for TRAVELHOST will be filing a motion seeking an emergency status conference⁵ and emergency continuance of trial and pretrial deadlines,⁶ given the current situation in this case. There are additional facts which are explained in depth in the motion to be filed today that establish good cause for such relief.

DATED this 21st day of May, 2012.

Respectfully submitted,

/s/ John A. Price

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⁵ FED. R. CIV. PRO. 16(a) provides that:

In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating settlement.

⁶ "A scheduling order may be modified only for good cause and with the judge's consent." FED. R. CIV. PRO. 16(b)(4).

/s/ Elisabeth A. Wilson

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ATTORNEYS FOR PLAINTIFF,
TRAVELHOST, INC.

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all parties registered on the CM/ECF system for this case. Furthermore, a true and correct copy of this document was served on counsel for the Defendants via facsimile on May 21, 2012, to:

Dominic J. Gianna
MIDDLEBERG, RIDDLE & GIANNA
201 St. Charles Ave.
New Orleans, LA. 70170-3100
Fax: 504-581-5983
ATTORNEY FOR DEFENDANTS

Additionally, because of the possible withdrawal of counsel, Plaintiff has also sent notice of this filing on May 21, 2012, by email to all defendants at the addresses which were previously registered for service on the ECF system.

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Donna A. Stamates
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Andrew Seeley
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Robert Nickerson, Jr.
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***(For informational purposes only – this is not an
attempt to collect a debt or to continue this litigation
against you)***

/s/ Elisabeth A. Wilson
Elisabeth A. Wilson